IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10170 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHABEN @ SITABEN M KHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10170 of 1993

MR BJ JADEJA for Petitioner No. 1

Mr. KT Dave, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioner, wife of respondent No.3 herein had preferred present Special Civil Application under Article 227 of the Constitution of India challenging the order passed by the Gujarat Revenue Tribunal dated

24.8.1993 passed in Revision Application No. TEN/BS/312/87 confirming the order passed by the Mamlatdar & ALT, Mangrol in Ceiling Case No. 131/1976 and also the judgment and order passed by the Deputy Collector, Olpad Prant, Surat in Ceiling Appeal No. 36/1981.

2. That respondent No.3 herein Mansing Pratapsing was holding land admeasuring 23 acres and 34 gunthas of land at Village Limbada, Taluka-Mangrol, District-Surat as on 24.1.1971. That on Gujarat Agricultural Land Ceiling Act (hereinafter referred to as "the Act") came into force the said respondent No.3 herein had filled in necessary form No.2 in the office of Mamlatdar, Mangrol on 28.6.1976 on the basis of which proceedings under Section 20 of the Act were initiated and the Mamlatdar and ALT, Mangrol by his order dated 31st August 1981 declared 6 acres and 5 gunthas of land as excess surplus land. That it seems that the said Mansing, i.e., husband of the petitioner herein had also given choice and exercised option with regard to retaining the land and has given the choice to declare 3 acres and 13 gunthas of land from land bearing Survey No. 753 and 2 acres and 15 gunthas of land from the land bearing Survey No. 477.

3. Being aggrieved and dissatisfied with the said order passed by the Mamlatdar and ALT, Mangrol, dated 31st August 1981, the said Mansing preferred an appeal being Appeal No. 36/1981 before the Deputy Collector, Olpad Prant, Surat. That by judgment and order dated 27.1.1982 the Dy. Collector, Olpad Prant, Surat dismissed the said appeal and confirmed the order passed by the Mamlatdar & ALT, Mangrol, dated 31st August 1981.

4. That being aggrieved and dissatisfied with the order passed by the Dy. Collector, Olpad Prant, Surat dated 27.1.1982 the petitioner, wife of respondent No.3 had preferred Revision Application before the Gujarat Revenue Tribunal, being Revision Application No. TEN.BS 312/87 on 8.9.1987. It was the contention of the petitioner that when she came to know about the notice with regard to compensation on 22.7.1987 with regard to land bearing Survey No. 753 admeasuring 3 acres and 30 gunthas of land immediately the said Revision Application was filed on 8.9.1987. It was contended on behalf of the petitioner that as such land bearing Survey No. 753 admeasuring 3 acres and 30 gunthas of land was in the name of the petitioner when the Act came into force and therefore before passing the order the petitioner was required to be heard. The petitioner therefore requested that as no notice was issued upon the petitioner the

order passed by the Mamlatdar and ALT was a nullity and hence the same is required to be quashed and set aside. On the other hand, the learned Special Government Pleader has raised a preliminary objection with regard to limitation. It was submitted on behalf of the State Government that the order passed by the Deputy Collector was dated 27.1.1982 and thereafter the revision application was filed before the Gujarat Revenue Tribunal on 20th August 1987, i.e., after a period of 5 years and as the applicant was the wife of the respondent No.3 herein they were residing together and therefore it cannot be believed that she was not aware of the order passed by the Dy. Collector. On merits also, the learned Special Government Pleader submitted that the original land owner Mansing, husband of the applicant had transferred the land bearing Survey No. 753 and other survey numbers in favour of the applicant his wife without any consideration and by oral agreement after the appointed day, i.e. on 6.11.1969 and even otherwise the land in question which was in the name of the applicant who was wife of original landowner was required to be considered in the holding of original land owner under Section 6(2) of the Act and therefore no separate notice was required to be given. That the Gujarat Revenue Tribunal by its judgment and order dated 23rd July 1993 had dismissed the said application on the ground of limitation and also on merits.

5. That being aggrieved and dissatisfied with the said judgment and order dated 23rd July 1993 passed by the Gujarat Revenue Tribunal, Ahmedabad, passed in Revision Application No. TEN.BS 312/87, the present Special Civil Application is filed by the petitioner, who is the wife of respondent No.3 herein.

6. Shri BJ Jadeja, ld. advocate appearing on behalf of the petitioner had submitted that on the day on which the Act came into force, the land in question, i.e. land bearing Survey No. 753 which is declared as surplus land was in the name of the petitioner and though the said land can be considered in the holding of respondent No.3 her husband under Section 6(2) of the Act, still before passing final order under Sec. 20 the petitioner was required to be given a notice. For that purpose, he has relied upon judgment of Division Bench of this Court in the case of Kashiben, W/o. Ambalal Chhotalal Patel & Others Vs. State of Gujarat & Another, reported in 12 G.L.R. Page 540, more particularly Para 9 of the said judgment in which it is held as under;

"That the notice contemplated under sub-section (2) of Section 20 should be issued to all the members of the family, who are holding land in their individual capacity in respect of the fact that the lands held by them are grouped together for the purpose of determination of excess over the prescribed ceiling under sub-section (2) of Section 6."

Therefore, he has submitted that as the order passed by the Mamlatdar & ALT, Mangrol, declaring 3 acres and 30 gunthas of land from the land bearing Survey No. 753 was without issuing notice upon the petitioner and therefore requested to quash and set aside the same and also quash and set aside the order passed by the Dy. Collector as well as the Gujarat Revenue Tribunal. So far as the limitation point is concerned, Shri Jadeja has submitted that as the petitioner was not a party to the proceedings before the Mamlatdar & ALT and also before the Dy. Collector though she was a necessary party the said orders will not bind her and she can challenge the said order at any time as and when she comes to know about the same, and as the aforesaid orders are a nullity there would be no question of limitation. Therefore, Shri Jadeja requested to quash and set aside the orders passed by all the authorities below.

7. Shri KT Dave, learned AGP appearing on behalf of the State Government, however, supported the order passed by all the authorities below. He has submitted that the judgment and order passed by the Dy. Collector, Olpad Prant, dated 27.1.82 and revision application before the Gujarat Revenue Tribunal was filed on 20th August 1987, i.e., after a period of 5 years and the petitioner is the wife of respondent No.3 who was residing together and therefore it cannot be believed that she was not aware of the order passed by the Dy. Collector, Olpad Prant, dated 27.1.1982. Therefore, he submitted that the Gujarat Revenue Tribunal has rightly held that the revision application is barred by limitation. He has also further submitted assuming without admitting the orders passed by the Mamlatdar & ALT and Dy. Collector are nullity as the petitioner was not a party to the said proceedings then also the said orders are required to be challenged before a competent forum and when she was aware of the judgment and order passed by the Dy. Collector dated 27.1.1982 and she filed the revision application on 20th August 1987 the Gujarat Revenue Tribunal was right in dismissing the revision application on limitation point also. Shri Dave has submitted that

as such the petitioner being the wife of respondent No.3 under Sec. 6(2) of the Act her land was required to be clubbed with the holding of respondent No.3 and therefore the said land is considered to be in the holding of respondent No.3 and therefore she was not required to be given any individual notice.

Shri KT Dave has further submitted further that the land in question, i.e., land bearing Survey No. 753 which was declared as surplus land was transferred in favour of petitioner on 6.11.1969 without any consideration and by an oral agreement and as the said transfer was after the appointed day, i.e. after 15th January 1959 and between 24th January 1971 the said transaction was hit by the provisions of section 7 of the Act and therefore as such the land bearing Survey No. 753 was required to be considered in the holding of the original land owner respondent No.3 herein. He has also submitted that no application was filed by the petitioner under Section 8 of the Act declaring that the said transaction was not with a view to hit the provisions of the Act and in absence of any application under Sec. 8 of the Act the land bearing Survey No. 753 was required to be considered of the ownership of respondent No.3 and the said transaction by which the name of the petitioner was entered into the Record of Rights was required to be ignored for all purposes. Therefore, Shri KT Dave has submitted that the judgment of this Court, which is relied upon by the petitioner is not applicable to the facts and circumstance of the present case. He has submitted that in that case the transaction was prior to 1959, i.e., before the appointed day, and in the facts and circumstances of that case the transaction was not hit by the provisions of Section 7 of the Act. This Court has held that while clubbing the land under Sec. 6(2) of the Act individual notices as contemplated under sub-section (2) of Section 20 are required to be given to all the members of the family and therefore he has submitted that the said judgment is not applicable to the facts and circumstances of the present case and therefore he has requested to dismiss the present Special Civil Application.

8. I have heard the learned advocates appearing on behalf of the parties. Form No.2 was filled in by respondent No.3 husband of the petitioner on the basis of which the proceedings under the Act were initiated. ON termination of the said proceedings the Mamlatdar and ALT, Mangrol by his judgment and order dated 31.8.1981 declared 6 acres and 5 gunthas of land. That on the basis of the choice exercised by the original land owner,

i.e., respondent No.3 the land bearing Survey No. 753 admeasuring 3 acres and 30 gunthas was declared as surplus land the said order came to be challenged by respondent No.3 before the Dy. Collector, Olpad Prant and the same also came to be dismissed by the Dy. Collector, by his judgment and order dated 27.1.1982. It is pertinent to note that the said order passed by the Dy. Collector, Olpad Prant, Surat dated 27.1.1982 has not been challenged by the respondent No.3 original land owner any further. Thus, the said order has become final. That the petitioner herein straightway preferred the Revision Application before the Gujarat Revenue Tribunal after a period of 5 years and 4 months of passing the order by the Deputy Collector, Olpad Prant, Surat by contending, inter alia, that the day on which the 'Act' came into force, the land in question bearing Survey No. 753 was in the name of the petitioner and she was the owner on the day on which the Act came into force and therefore she was required to be given a notice under Section 20. The Tribunal, considering the fact that the petitioner herein is the wife of respondent No.3 and they are residing together, has come to the conclusion that it cannot be said that the petitioner was not aware of the order passed by the Dy. Collector on 27.1.1982 and therefore the Tribunal has come to the conclusion that the revision application filed by the petitioner was time barred. This is a finding of fact given by the Tribunal on the basis of the evidence on record which cannot be interfered with by this Court exercising the power under Article 227 of the Constitution of India. Even considering the aforesaid facts and circumstances of the case, I am also of the view that when the petitioner was residing with the respondent No.3, it cannot be believed that she was not aware of the order dated 27.1.1982 passed by the Deputy Collector, and therefore the finding given by the Gujarat Revenue Tribunal to the effect that the revision application was barred by limitation is required to be upheld.

9. Even on merits also, the petitioner has no case. It is true that before the trial Court the contention with regard to the provisions of Sections 7 and 8 of the Act were not advanced. However, the fact that the name of the petitioner was entered into on 6.11.1969 on the basis of some oral agreement and the fact that the said land was transferred by the respondent No.3 in favour of the petitioner on 6.11.1989 without any consideration are not disputed by the petitioner and which cannot be disputed as it is borne out from the record itself. Now, when that is the fact, then considering the provisions of Section 7 of the Act, as the said transaction was after

the appointed day, i.e., after 15th January 1959 and before 24th January 1971, the said transaction by which the name of the petitioner was entered into and by which the land was transferred in favour of the petitioner was required to be ignored and the land in question was required to be considered of the ownership of the original-land owner, i.e. respondent No.3 herein. Therefore, even if the said land was not required to be clubbed into the holding of respondent No.3 the transaction itself by which the petitioner became the owner of the land Survey No. 753, was hit by Section 7 of the Act. In absence of any application made by the petitioner under Section 8 of the Act before the Collector for a declaration that the said transaction/transfer is not with a view to defeat the provisions of the Act, the land bearing Survey No. 753 was required to be considered of the ownership of respondent No.3 and therefore when the respondent No.3 was heard and on the basis of the choice exercised by the respondent No.3 for declaring the land bearing Survey No. 753 admeasuring 3 acres and 30 gunthas of land as surplus land, the impugned order came to be passed, it cannot be said that there is any illegality committed by the authorities below. When it is found that the transaction/transfer itself is invalid and the land is required to be considered of the ownership of the respondent No.3, then there is no question of giving any notice to the petitioner as required under Section 20(2) of the Act.

The facts in the case of Kashiben (Supra) were that partition took place as early as on 30th July 1956 by regular deed of partition and it was also registered. After the said partition, relevant entries were made in the Record of Rights and were certified on or about 24th February 1958. Thereafter when the Act came into force on 24th August 1961 proceedings were taken by the authorities concerned under the Act. It was found that original land owner Ambalal Chhotalal Patel was holding surplus land admeasuring 48 acres and 36 gunthas of land. This surplus land was found after applying the provisions of sec. 6(2) of the Act, which says that where an individual, who holds land, is a member of a family and land is also separately held by such individual's spouse or minor children, then the land held by the individual and the said members of the individual's family shall be grouped together for the purposes of the Act. In view of the aforesaid provisions, the land held by the petitioners were grouped together with the land held by Ambalal and it was on account of this grouping that the Tribunal found that Ambalal was holding surplus land

admeasuring 48 acres and 36 gunthas of land. In light of the aforesaid facts, this Court, in the aforesaid Judgment came to the conclusion that even if the said land was required to be clubbed in the holding of Ambalal under Section 6(2) of the Act, then also all the family members were required to be served with individual notice as contemplated in sub-section (2) of Section 20. In the present case, as can be seen, the transaction in question and the transfer of land bearing Survey No.753 was on 6.11.1969 by oral agreement and that too without any consideration. Thus, the aforesaid transaction/transfer was after the appointed day, i.e. after 1959 and before 1971. Therefore, the said transaction/transfer is hit by the provisions of Section 7 of the Act and therefore the judgment of this Court in Kashiben (Supra) is not applicable to the facts of the present case. There, there was no question of the transaction being declared as invalid under the provisions of Section 7 of the Act. There the transaction and the partition was prior to 1959, i.e., in the year 1956 and therefore the judgment in the aforesaid case of Kashiben (Supra) is not applicable to the present case. Thus, in view of the aforesaid facts, when the transfer itself was hit by Section 7 of the Act, the said transaction was required to be ignored and the said land bearing Survey No. 753 admeasuring 3 acres and 30 gunthas of land was required to be considered of the ownership of respondent No.3.

10. In view of the aforesaid facts and circumstances of the case, it cannot be said that the judgment and orders passed by all the authorities below declaring 3 acres and 30 gunthas of land as surplus from Survey No. 753 are illegal, which requires to be quashed and set aside exercising the powers under Article 227 of the Constitution of India. There is no error committed by the authorities below in declaring the aforesaid land as surplus land. For the reasons stated hereinabove, the present Special Civil Application has no substance which is required to be dismissed and is hereby dismissed.

Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

rmr. [M.R. Shah, J.]